

WSDOT Tribal Consultation Policy

BRIEFING PAPER

Prepared for the

February 2003 TRANSPORTATION COMMISSION MEETING

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Approved by: Paula Hammond, Chief of Staff

PURPOSE:

To present Commissioners the department's recommended final Tribal Consultation Policy. The Policy is a key element of the Centennial Accord Implementation Plan.

ACTION/OUTCOME:

The department requests the Commissions' adoption of its Tribal Consultation Policy.

BACKGROUND:

Governor Booth Gardner signed the Centennial Accord in 1989 with the federally recognized tribes in Washington State to commemorate the State Centennial. Its purpose is to improve relations between the sovereign tribal governments and the state of Washington. The Consultation Policy is a key element of the Centennial Accord Implementation Plan.

The WSDOT Centennial Accord Plan will provide a framework for the department to implement the consultation policy and will identify services and programs that are available to tribes across the agency and at the regional offices.

DISCUSSION:

The department has been working diligently to complete its Centennial Accord Plan. We have created this plan in accordance with the 1989 *Centennial Accord* and the 1999 *Centennial Accord Implementation Guidelines*. The department's plan hopes to demonstrate its commitment to effective government-to-government relationships with the 29 federally recognized tribes in Washington State.

The Centennial Accord Plan begins with our Tribal Consultation Policy. My staff and I have consulted with tribal leaders and professional staff on the policy throughout the development process. We worked with a tribal/state task force, researched other federal

and state policies, and presented several revised versions to Affiliated Tribes of Northwest Indians conferences and committees.

At the Tribal/State Transportation Conference on October 7-8, 2002, a draft of the policy was presented to tribal and agency policy makers for discussion.

Secretary MacDonald presented a revised draft at the Annual Centennial Accord Meeting between the Governor and the tribal chairs. A follow-up copy was mailed to each tribal chair in December.

Attached is the final draft that reflects all comments collected throughout the process.

The broader Centennial Accord Plan includes information from each of the divisions and offices within the department. The entire agency has been engaged in developing the Centennial Accord Plan. Managers throughout the organization have described the services they offer and their relationships with tribes.

The Centennial Accord Plan is a dynamic document that can appropriately be adjusted to our changing needs. Consequently, with input from the tribes, the department hopes to update the Plan each year. In this way, the department will assure that our institutional commitment to government-to-government relationships can be kept timely and vital.

RECOMMENDATION:

None required.

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Tribal Consultation Policy

This consultation policy provides consistent and equitable standards for working with the various tribes across the state, and flexibility in recognition that each federally recognized tribe is a distinctly sovereign nation. It is based on the 1989 Centennial Accord, and uses the Centennial Accord Implementation Guidelines determined by a combined tribal/state taskforce and published by the Governor's Office of Indian Affairs in 1999. State and tribal elected officials agreed that the guiding principles should be followed with honesty and integrity. By implementing the following principles of government-to-government relations and consultation, we hope to better understand and respect the rights and interests of tribal governments.

Principles of Government-to-Government Relations established at the 1999 Tribal – State Summit at Leavenworth, Washington:

1. Work directly with each other in a government-to-government fashion, rather than as subdivisions of other governments.
 2. Take appropriate steps to remove legal and procedural impediments to working directly and effectively with each other's governments and programs.
 3. Endeavor to assure that each other's concerns and interests are considered whenever their actions or decisions may affect the other's governments or programs.
 4. Encourage cooperation between tribes, the state and local government to resolve problems of mutual concern.
 5. Work with federal agencies that have related responsibilities.
 6. Incorporate these Principles into planning and management activities, including budget, program development and implementation, legislative initiatives, and ongoing policy and regulation development processes.
 7. Coordinate and provide mutual assistance as the governments assume new regulatory and program management responsibilities.
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Principles of Consultation established at the 1999 Tribal – State Summit at Leavenworth, Washington:

1. Tribes and state commit to consultation.
2. Communication and consultation is a two-way street.
3. Build upon already established and on-going relationships between tribal/state officials.
4. State governments are assuming greater responsibility under the federal government's policy of increased "devolution" of programs.
5. Issues that require consultation should be identified as soon as possible in order to involve both parties early on in the process.
6. State/Tribes should make every effort to respond to, and participate in, the consultation process.
7. Parties should ensure that consultation occur through the interaction of officials with comparable governmental stature and authority.

The Washington State Department of Transportation (WSDOT) is fully committed to the implementation of the 1989 Centennial Accord. This policy also incorporates WSDOT's Management Principles adopted in 2002. It is the policy of WSDOT to:

- Work with each of the federally recognized tribes who have ancestral homelands within the state boundaries, including those having reservations located outside of the state.
- Strive to consult with non-federally recognized tribes regarding construction projects that may disturb earth in areas of the tribe's historic occupation.
- Maintain a Tribal Liaison Office to encourage and facilitate communication between the tribes and the agency.
- Endeavor to consult on all decisions that may affect tribal rights and interests.

The unique legal status of tribes, rights reserved through historic treaties, and cultural interests throughout the state, creates a unique relationship between tribes and WSDOT. Tribes maintain sovereignty rights that predate the formation of the United States and the State of Washington and are guaranteed under treaties and federal laws. Since 1924, tribal members have been citizens of the United States and the State of Washington. Due to federal laws affirming tribal sovereignty, each reservation in the state constitutes a bordering jurisdiction for state agencies. WSDOT actions outside reservations may affect the tribes and the residents of reservations, just as the actions within reservations may affect the state and its citizens.

Depending on the nature of the issue under consideration, consultation may appropriately be held between elected officials, management staff, or technical staff in respective tribal and state agencies. The goal is to create durable intergovernmental relationships that promote coordinated transportation partnerships in service to all of our citizens. Implementation of the 1989 Centennial Accord is an on-going process and WSDOT will continually seek ways to improve our government-to-government relationship with tribes.

Consultation means respectful, effective communication in a cooperative process that works toward a consensus, before a decision is made or an action is taken. WSDOT is committed to government-to-government consultation with tribes on actions that affect identified tribal rights and issues. Consultation means more than simply informing affected tribes about what the agency is planning to do. WSDOT acknowledges that consultation is a process, not a guarantee of agreement on outcomes. While dedicated to implementing constructive consultation practices, the agency hopes to go beyond issue-specific consultation. The goal is to achieve mutually beneficial priorities, programs and interests.

WSDOT's Tribal Liaison Office is responsible for assisting tribes and the agency with implementing effective government-to-government relations. The Tribal Liaison Office maintains an open-door policy. The liaison provides tribes with a point of contact within the agency and helps tribes gain access to the appropriate staff to assist in understanding the agency's programs, policies and laws. Similarly, the liaison assists the agency in understanding tribal issues, making contacts, initiating consultation, and by promoting on-going coordination with tribes. The liaison facilitates meetings, negotiates intergovernmental agreements on behalf

of the agency and Secretary, and helps reconcile differences between the agency and tribal governments.

There are many opportunities for consultation and communication. Operational activities will be conducted between appropriate agency staff and tribal employees. Official government-to-government consultation will be conducted between the Secretary or his designee and the Tribal Council. WSDOT will strive to reply to tribal requests for state comments and consultation on tribal actions in a timely manner.

WSDOT will be proactive in consulting with tribes on all pending decisions that may affect their identified tribal rights and interests. As issues with tribal implications occur, WSDOT will cooperatively establish the manner and time frame for consultation with the appropriate tribal governments. When a rule or policy process is planned that may affect tribal rights and interests, WSDOT will invite interested tribes to consult on a government to government basis, while at the same time encourage tribal participation as key members of any planned advisory group.

WSDOT will be receptive to all requests from tribal governments for intergovernmental consultation on actions, policies and issues within WSDOT's authority. Given the number of tribes, the extent of tribally reserved rights, and the size and the complexity of WSDOT, the agency may not be able to identify in advance all issues that may be appropriate subjects for tribal consultation. However, as appropriate issues are identified, WSDOT will begin the consultation process. Memoranda of Agreement or Understanding, (MOA/MOU), and specific contracts, are individually negotiated with their scope of services or interests determined on a project or program basis.